and bore date of the first mortgage, such date being nearly a year previous to execution. The condition of the second mortgage was the satisfaction of record of the first. Fraud was not alleged in the complaint. Neither was the defrauded party (the State) before the court. *Held,* that the defandant did not intend thereby to evade taxation, and that said mortgage and note constituted a valid contract which could be enforced by a court of equity. McIver, C. J., *dissenting.*

Disclosure of fraud against the government is generally fatal to the case. If the illegality is not alleged, but is first disclosed by evidence, the court itself will pursue the inquiry. *Parken v. Whitby,* T. & R. 366. But there is some discrepancy of opinion in respect to the certainty with which the illegality must be established. *Johnson v. Shrewsbury Ry.,* 3 De G. M. & G. 914, held the illegality must be simply shown by convincing evidence. Lord Hatherley stated, in *Auben v. Holt,* 2 K. & J. 66, that it is not within the discretion of the court to refuse specific performance because an agreement savors of illegality. The latter opinion has the weight of authority. Can the defendant, being in *pari delicto,* avail himself of the equitable doctrine that no court will lend aid in enforcing an agreement entered into in violation of law? If executed, a court of equity will not grant aid. *Solinger v. Earle,* 82 N. Y. 393; *York v. Merritt,* 77 N. C. 213. If executory, it cannot be enforced by any kind of action brought directly upon it. The defense of illegality is allowed from motives of public policy rather than in regard to interests of the objecting party. See decision by Lord Mansfield in *Holman v. Johnson,* 1 Cowp. 341.

TAXATION—STATUTORY EXEMPTIONS—LAND OWNED BY CITY.—CITY OF CINCINNATI V. LEWIS, AUDITOR, 63 N. E. 588 (OHIO).—The city of Cincinnati owned land which was rented to a private person and by him used for farming purposes. *Held,* that the land was subject to taxation.

It is a general rule that land owned by a municipality and not used in the actual exercise of its municipal functions is subject to taxation. *Town of West Hartford v. The Board of Water Commissioners,* 44 Conn. 360. It is not exempt, though leased and the rent applied to a public purpose. *City of Louisville v. Commonwealth,* 1 Duvall 296 (Ky.).

TELEGRAPH COMPANIES—FAILURE TO DELIVER MESSAGE—MENTAL ANGUISH.—SPARKMAN V. WESTERN UNION TEL. CO., 41 S. E. 881 (N. C.).—Plaintiff received a message that his brother had died and telegraphed back, "Shall we look for him or what are you going to do?" The company failed to deliver the dispatch. *Held,* that the plaintiff could not recover damages for mental suffering. Douglas, J., *dissenting.*

This case illustrates the limitations placed upon the "mental anguish" doctrine by those courts which recognize it. A company will not be held liable where there is nothing in the language of the message to indicate that mental anguish would naturally result. *Shear. & Red.,. Neg.,* Sec. 756. Nor is there liability for failure to deliver message intended to relieve mental anxiety already existent in sender's mind. *Rowell v. Tel. Co.,* 75 Tex. 26. But the weight of authority is against recovery for mental anguish alone under any circumstances. *Francis v. W. U. Tel. Co.,* 58 Minn. 252; *Morton*

v. W. U. Tel. Co., 53 O. St. 431. Indiana and Virginia have recently taken this majority view. *W. U. Tel. Co. v. Ferguson*, 157 Ind. 64; *Connelly v. W. U. Tel. Co.*, 40 S. E. 618.

JOINT TORT FEASORS—RELEASE OF ONE RELEASES ALL.—ABB V. NORTHERN PAC. RY. CO., 68 PAC. 954 (WASH.).—Injuries were occasioned by the joint carelessness of the Grant Street Electric Co. and defendant. Plaintiff upon consideration of partial satisfaction released the street electric company from all damages, but expressly reserved the right to hold the defendant. *Held*, an absolute release of the one released the other also.

The weight of authority supports the doctrine that when the full amount of damages is ascertainable by direct positive proof, an absolute release of one, on consideration of partial satisfaction, is not a bar. *Cooley on Torts*, 139; *Ellis v. Essan*, 6 N. W. 518 (Wis.); *Sloan v. Herrick*, 49 Vt. 327. There are conflicting decisions where the damages rest mainly upon the opinion of a jury. The present case is supported by *Ellis v. Bitzer*, 2 Ohio 89; *Gunther v. Lee*, 45 Md. 60. A contrary view, however, is taken in *Matthew v. Chicopee Mfg. Co.*, 3 Robt. (N. Y.) 713. An agreement to discontinue a suit against one, in the absence of full satisfaction, was held to operate as a bar to further action in *Mitchell v. Allen*, 25 Hun 543, and *Ayer v. Ashmead*, 31 Conn. 447; but it was not so held in *Lovejoy v. Murray*, 3 Wall. (U. S.) 1, and *Chamberlin v. Murphy*, 41 Vt. 110. A distinction was made between a technical release, and one merely by implication, in *Bloss v. Plymale*, 3 W. Va. 393, where a receipt in full given to one tort-feasor did not release the others.

WILLS—PROBATE—TESTAMENTARY CAPACITY—EXPERT WITNESSES—INSTRUCTIONS.—IN RE BLAKE'S ESTATE, 68 PAC. 827 (CAL.).—The lower court had instructed the jury that the opinions of experts, although competent as evidence, were frequently unsatisfactory and unreliable, and that such opinions were not entitled to as much weight as facts. *Held*, that the instruction was erroneous as matter of law.

By the principle that the credibility of witnesses is exclusively within the province of the jury, the court must not disparage expert testimony. *Louisville, etc., R. Co. v. Whitehead*, 71 Miss. 451; *White v. Fox*, 1 Bibb (Ky.) 371. But the court may instruct that expert evidence of opinion should be received with caution. *Rogers' Expert Test.* 451; *Maye v. Herndon*, 30 Miss. 118; *Grigsby v. Waterworks Co.*, 40 Cal. 396. And the instruction of the lower court seems to have gone no further than the cautionary instruction in *Benedict v. Flanigan*, 18 S. C. 506: "All testimony founded upon opinion merely is weak and uncertain and should in every case be weighed with great caution."